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PATENT

Atty Docket No.: 200208214-1
App. Ser. No.: 10/608,206

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks.

Claims 33 and 39 have been amended. Claims 35 and 41 have been canceled without prejudice or disclaimer of the subject matter contained therein. Claims 43-46 were previously canceled for being drawn to a non-elected invention. Claims 1-16 and 18-34, 35-40 and 42 are pending of which claims 1, 16, 33 and 39 are independent.

Claims 1, 10, 16, 18, 25, 29-32 and 39 were rejected under 35 U.S.C. 102(a) as allegedly being anticipated by Bodas (20040163001).

Claims 2, 3, 5, 19-20, 22, 33, 34, 36-38 and 40 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Bodas in view of Montero et al. (20030015983).

Claims 6, 8, 15, 28 and 42 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Bodas in view of Kling et al. (20010003207).

Claim 9 was rejected under *35* U.S.C. 103(a) as allegedly being unpatentable over Bodas in view of Bradley et al. (20030177406).

Claims 11 and 12 were rejected under *35* U.S.C. 103(a) as allegedly being unpatentable over Bodas in view of Oehler et al. (20040003303).

Claims 13, 14, 26, and 27 were rejected under *35* U.S.C. 103(a) as allegedly being unpatentable over Bodas in view of Oprescu et al. (5,752,046).

Claims 23-24 were rejected under *35* U.S.C. 103(a) as allegedly being unpatentable over Bodas in view of Lee et al. (20030204762).

The aforementioned rejections are traversed for at least the following reasons.

Presumed allowable Subject Matter

The undersigned thanks the Examiner for indicating that dependent claims 4, 7, 21, 35, and 41 are objected and presumably would be allowable if rewritten as independent claims.

Claim Rejections Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

> Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1, 10, 16, 18, 25, 29-32 and 39 were rejected under 35 U.S.C. 102(a) as allegedly being anticipated by Bodas (20040163001).

Claims 1-16 and 18-32

Independent claim 1 recites, *inter alia*, "the power supply for the at least one computer system has a maximum power output based on an average power consumption of the at least one computer system." Likewise, independent claim 16 recites, *inter alia*, "the maximum capacity of the power supply is based on an average power consumption of the at least one computer system." In contrast, Bodas makes no mention of the maximum capacity or maximum power output of any of the power supplies 240 (FIG. 2), 275 (FIG. 3) or the uninterruptible power-supply (UPS) 285 (FIG. 3). Indeed, like the previously cited Kling et al. reference, Bodas fails to disclose anything about the power supply of the computer system. Instead, Bodas is concerned with setting a P_{TARGET}, which a target power consumption level of a computer system, so that the computer system "may use the P_{TARGET} to determine when to begin to throttle power to one or more components in the computer system 105." (Emphasis original), whereby the power to be throttled presumably comes from a power supply.

As cited in the Office Action, Bodas merely states in P[0025] that P_{TARGET} may be set based on, for example, available power capacity (presumably of the power supply). Yet, Bodas fails to specify that such power capacity of the power supply has a maximum capacity or maximum output based on an average power consumption of the at least one computer system. Although, Bodas in P[0025] also states that P_{TARGET} "may be set by automatically monitoring the power consumption level of the computer system .. and calculate an average power consumption level," it also fails to indicate whether such average power consumption level of the computer system has anything to do with the maximum capacity of the power supply.

Because Bodas fails to disclose each and every element as arranged in claims 1 and 16, it is respectfully submitted that claims 1 and 16 and its dependent claims 2-16 and 18-32 are allowable over the references of record. Accordingly, withdrawal of the rejection of these claims is respectfully requested.

Claim 10 further recites:

> prioritizing applications running on the multiple computer systems;
>
> wherein the step of placing one or more components in a lower-power state further comprises identifying one of the multiple computer systems running one or more low priority applications, and placing at least one component in the identified computer system in a lower-power state.

The rejection fails to indicate where in Bodas does it teach *prioritizing applications and placing components running low priority applications in a lower-power state.* Accordingly, claim 10 is further allowable over the references of record.

Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 2, 3, 5, 6, 8, 9, 11-15, 19-20, 22-24, 26-28, 33, 34, 36-38 and 40 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Bodas in view of various other references.

Claims 2, 3, 5, 6, 8, 9, 11-15, 19-20, 22-24 and 26-28

It is respectfully submitted that, for at least the reasons set forth earlier, claims 1 and 16 are not anticipated by Bodas. In addition, the Office Action does not rely upon other cited references to make up for the deficiencies in Bodas with respect to claims 1 and 16. Accordingly, claims 2, 3, 5, 6, 8, 9, 11-15, 19-20, 22-24 and 26-28 are allowable over the references of record, withdrawal of the rejection of these claims is respectfully requested.

Claims 33, 34, 36-38 and 40

Claim 33 has been amended to incorporate the allowable subject matter found in objected claim 35 (which has been canceled). Therefore, it is respectfully submitted that claim 33 and its dependent claims 34 and 36-38 are allowable over the references of record, and withdrawal of the rejection of these claims are respectfully requested.

Claim 39 has been amended to incorporate the allowable subject matter found in objected claim 41 (which has been canceled). Therefore, it is respectfully submitted that claim 39 and its dependent claims 40 and 42 are allowable over the references of record, and withdrawal of the rejection of these claims are respectfully requested.

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Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: July 12, 2006 By

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